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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 203735

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 18, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on December 22, 2021, by telephone.

The issue for determination is whether the agency correctly found that Petitioner was overpaid BadgerCare Plus benefits in the total amount of \$6,477.50 due to client error.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County who received BadgerCare Plus (BCP) benefits for herself and two children during the period of October 2015 through March 2017.
2. On January 30, 2015, the agency had issued to Petitioner an “About Your Benefits” notice, which stated that she was eligible for BCP benefits and that if her 3-person assistance group’s total monthly income increased to an amount in excess of \$1,649.17 (i.e., 100% Federal Poverty limit (FPL) for a three member household), she must report it by the 10<sup>th</sup> day of the next month.
3. Petitioner was employed by [REDACTED] Corp. during the period of 2015-2017.
4. Petitioner’s monthly taxable income from August 2015 through March 2017 exceeded 100% FPL for a three-person assistance group in all months except the period of June 2016 through August 2016.
5. Petitioner did not notify the agency that her gross income exceeded \$1,649.17 starting in August 2015.
6. On September 27, 2021, the agency issued four *Wisconsin Medicaid and BadgerCare Plus Overpayment Notices* to Petitioner informing her that she received BCP benefits that she was not eligible to receive due to client error, identified as follows:
 

• Claim No. [REDACTED]	10/1/2015 – 1/31/16	\$1,297.45
• Claim No. [REDACTED]	2/1/2016 – 2/29/16	\$ 400.67
• Claim No. [REDACTED]	3/1/2016 – 5/31/16	\$2,152.68
• Claim No. [REDACTED]	9/1/2016 – 3/31/17	\$2,626.70
7. The Department of Health Services (the department) paid a total of \$6,477.50 in capitation payments and net paid Medicaid claims on behalf of Petitioner for the months of October 2015 through May 2016 and September 2016 through March 2017.
8. Petitioner filed a timely request for fair hearing.

**DISCUSSION**

The recovery of overpaid BadgerCare Plus benefits is authorized by Wis. Stat., §49.497(1) as follows:

- (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:
  1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
  2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
  3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would

have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the BadgerCare Plus Handbook (BCPH) §28.2. In other words, an overpayment is recoverable only if it is caused by the BCP recipient's error or omission. Overpayments caused by non-member errors, including errors made by the agency, are not recoverable. *Id.* at §28.3.

The BCP income eligibility limit for Petitioner was 100% of the federal poverty level (FPL). See Wis. Stat. § 49.471(4)(a) and BCPH §§16.1 and 18.1. BCP recipients must report increases in household income that may affect their program eligibility and must do so by the 10th of the month following the month in which the increase occurs. See *Id.* at §27.3. Effective February 1, 2014, the income eligibility limit for an assistance group of three was \$1,649.17 per month. Accordingly, Petitioner was required to timely notify the agency when her household gross monthly income exceeded \$1,649.17.

In a hearing concerning a BCP overpayment determination, the agency has the burden of proof. For the agency to prevail, a preponderance of the evidence in the record must demonstrate the propriety of the agency's recovery action. See Wis. Admin. Code §HA 3.09(4). More specifically, the evidence must show both that Petitioner failed to provide accurate or complete information, as detailed in Wis. Stat. §49.497(1)(a), and that the Petitioner was not eligible for BCP during the alleged overpayment period.

The agency provided documentation of wages from Petitioner's employer during the overpayment period. That documentation shows both that Petitioner's gross earnings exceeded the income reporting requirement by August 2015, as asserted by the agency, and that her countable income exceeded the BCP monthly income eligibility limit throughout the identified overpayment time period of October 2015 through May 2016 and September 2016 through March 2017. Had the Petitioner correctly reported her income by September 2015, it would have impacted her BCP benefits commencing in October 2015.

The documentation of Petitioner's earnings also shows that Petitioner's *annual* countable income exceeded 100% FPL. Such an analysis is required, per *DMS Operations Memo 17-35*, July 28, 2017, which states in relevant part:

When reviewing a case for any potential overpayments for health care, IM agencies must assess whether the person could have been eligible in any other category of Medicaid before issuing an overpayment. Since gap filling is considered a category of Medicaid, agencies must assess whether the person could have been eligible under gap filling rules during the overpayment period. If the person could have been eligible under gap filling rules for the overpayment period, he or she should not be subject to an overpayment.

See also BCPH §28.3.1.

The agency offered a copy of a notice advising Petitioner of her income reporting requirements and contended that Petitioner failed to comply with those requirements by not timely notifying the agency of her increase in income. To support its contention, the agency presented testimony indicating that the agency was never informed by Petitioner of income exceeding program requirements at any time. Employer Verification of Earnings forms were also provided showing petitioner's anticipated income, upon which her eligibility was determined at each renewal.

Petitioner raised concern that child support paid by the father of her children may have been counted in her income. However, as the respondent's representative correctly explained, child support is not counted

for BCP eligibility purposes. Petitioner also explained that she had done her best to comply with her income reporting requirements as she understood them. She always provided the requested wage documentation at her renewals, and noted that she does not recall knowing about any other income reporting requirements.

The longer it takes for the agency to establish an overpayment claim, the less likely it is for an individual to have clear memories of relevant events; nevertheless, based on a totality of the evidence in the record before me, I find that it is more likely than not that Petitioner did not timely report to the agency that her monthly income exceeded \$1,649.17, as she was required to do. Although the evidence indicates that her failure was clearly not intentional, the relevant law permits the agency to recover overpayments even where caused by good faith errors.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid a total of \$6,477.50 in BCP during the periods of October 2015 through May 2016 and September 2016 through March 2017 due to client error, and the agency may therefore recover that amount from her.

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

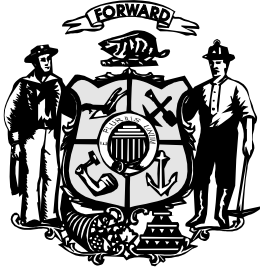
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of February, 2022



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Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 1, 2022.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability